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U.S. Citizenship and Immigration Services

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[redacted]

FEB 02 2004

FILE: [redacted] Office: SAN FRANCISCO, CA Date:

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A first motion to reopen was granted and the order dismissing the appeal was affirmed by the AAO. The matter is now before the AAO on a second motion to reconsider. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of the Philippines who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in February 1997. The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks the above waiver of inadmissibility in order to remain in the United States with her U.S. citizen husband and child.

The district director concluded that the applicant failed to establish extreme hardship would be imposed upon her U.S. citizen spouse if her waiver were denied. The application was denied accordingly. *See* Decision of District Director, dated August 24, 2001.

The decision of the district director was affirmed on appeal after the AAO failed to receive documentation in support of the appeal. The decision on appeal was affirmed by the AAO on first motion to reopen.

On second motion to reopen, counsel states that the decision of the AAO on first motion to reopen found the applicant statutorily ineligible for relief and therefore, concluded that no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. Counsel asserts that because the applicant was found statutory ineligible for relief, the AAO failed to consider the merits of the applicant's claim of extreme hardship. *See* Motion to Reconsider, I-601 Application for Waiver of Inadmissibility, dated March 28, 2003.

In support of these assertions, counsel resubmits only documentation already contained in the record on first motion to reopen including a declaration of extreme hardship from the applicant's husband, dated September 16, 2001; a copy of the U.S. birth certificate of the applicant's child; medical records for the applicant's child and color copies of photographs of the applicant and her family.

The record reflects that the applicant paid a travel agent $6000 to obtain a passport in another person's name and used that document containing a nonimmigrant visa to procure admission into the United States by fraud on February 11, 1997.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish

that the decision was incorrect based on the evidence of record at the time of the initial decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

On motion to reconsider, counsel states, "Because the applicant was found to be 'statutorily ineligible', the AAO believed there was no need for the Service (AAO) to consider the merits of the Declaration of Extreme Hardship previously submitted by the applicant's US citizen husband." The AAO finds that counsel misrepresents the findings of the AAO's decision on first motion to reopen which state, in pertinent part:

> A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that the qualifying relative would suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

AAO Decision, dated February 28, 2003. A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present application is that suffered by the applicant's husband. The decision of the AAO arrived at the above stated conclusion only after engaging in thorough analysis of the evidence proffered by counsel in support of the applicant's claim of extreme hardship. *Id.*

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). The previous decisions of the AAO did not reach the question of whether or not the Secretary should exercise discretion because the decisions found that the applicant had not established extreme hardship to a qualifying relative and therefore, "no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion." *Id.* at 6.

Counsel fails to provide evidence that was not available previously and could not have been discovered

during the prior proceedings under this application. Further, counsel fails to establish that the prior decision was based on an incorrect application of law or CIS policy.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The record does not demonstrate hardship amounting to extreme hardship in this application. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from his wife. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, as stated in the prior decisions of the AAO.

The applicant in this case has failed to identify any erroneous conclusion of law or statement of fact in her appeal. In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of February 23, 2003 affirming the August 5, 2002 dismissal of the appeal is upheld.